

Central Bank Enforcement Powers

Background:

The Central Bank and Financial Services Authority of Ireland Act 2004 gave the Central Bank additional powers to promote compliance with regulatory requirements. It had the power to impose sanctions in respect of breaches of regulatory requirements by regulated entities and to publicise the findings and sanctions imposed.

The Central Bank (Supervision and Enforcement) Act 2013 strengthened these powers by introducing additional sanctions under the Administrative Sanctions Procedure and substantially increasing the fines available.

Enforcement power

The **Enforcement Division** of the CBI carries out the enforcement powers of the CBI and cooperates with the various **Supervision Departments** in doing this.

The use of formal sanctions is only one of many tools available to the CBI to reprimand a financial services provider. Other powers include imposing conditions or directions on the regulated entity.

Not every breach of regulations results in enforcement action and many breaches are dealt with outside of the formal enforcement arena through regular supervision and monitoring.

The CBI's decision on how to proceed will in part be dependent on how promptly and sufficiently the regulated entity responds with remedial action and how it cooperates with the CBI.

Stage 1: initial investigation

Non-compliance by a regulated entity with legislation, regulations and codes of conduct is referred to as a **prescribed contravention**. Where the CBI is concerned that a prescribed contravention has taken place or is happening, an **investigation** may be commenced to establish whether there are reasonable grounds for suspicion and if the establishment of an **Inquiry** is warranted. A decision will not be taken until the regulated entity has had an opportunity to respond.

Stage 2: inquiry

If the **CBI Enforcement Directorate** decides to hold an inquiry, it will refer the case to the **Regulatory Decisions Unit (RDU)**. The RDU provides administrative support to the inquiry and is the point of contact for the regulated entity.

The inquiry members are drawn from officers of the Central Bank and/or external individual. A chairperson is nominated and all decisions are determined by a simple majority (each member has one vote).

Inquiry hearings are usually held in public but may be held in private if the inquiry so wishes or if mutually agreed between the parties. It is an informal process, unlike in a court of law. It

observes the rules of procedural fairness but is not bound by the rules of evidence – members make decisions on the balance of probabilities. However, the inquiry members may refer a question of law to the High Court for decision.

The inquiry sets out its judgement in writing as to whether it finds that the regulated entity has committed a prescribed contravention or not.

Notice period: a **Notice of Inquiry** is sent to the regulated entity at least **25 working days** in advance of an inquiry which sets out the suspected prescribed contravention and the grounds upon which the suspicions are based.

Stage 3: sanctions

A **sanctions hearing** will follow and submissions are invited from both the CBI Enforcement Directorate and the regulated entity.

The following factors are taken into consideration:

- Nature and seriousness of the contravention; whether it was reckless, deliberate or due to systemic weaknesses in systems, procedures and controls; impact on financial markets and public confidence; potential criminal proceedings
- Conduct of the regulated entity after the contravention – was the CBI advised quickly about the contravention; the degree of cooperation with the CBI; remedial steps taken by the entity
- Previous record of the regulated entity or its management team
- Other factors such as size of the entity; prevalence of this type of contravention in the industry; previous action taken by CBI in similar matters

Stage 4: appeal

The regulated entity may appeal the decision to the Irish Financial Services Appeals Tribunal (IFSAT) within 28 days of notification and may subsequently appeal IFSAT's decision to the High Court within 28 days of notification.

An appeal may be made by any affected person, not just the regulated entity i.e. a person whose interests are directly or indirectly affected by the decision e.g. a shareholder of the regulated entity.

The High Court's decision is final apart from appeal to the Supreme Court but on a point of law only.

Fines

Since the commencement of the Central Bank (Supervision and Enforcement) Act 2013, the fines that can be imposed due to administrative sanctions are:

- Max €10 million or 10% of turnover for a corporate entity
- Max €1 million for an individual (and or/disqualification)

Examples of sanctions imposed by CBI in 2015/16

1. XXX was fined €275,000 for breaches of the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2010. The Corporate Governance Code sets out minimum core standards. The firm failed to comply with certain standards required as a) some of its governance structures and internal controls were not sufficiently robust; b) its risk committee was not sufficiently effective; and c) it failed to adequately oversee its subsidiary.
2. A prohibition notice was issued against the individual XXX, acting as insurance intermediary. He has been prohibited from carrying out a CF or PCF function indefinitely.
3. A fine of €2,750 and a reprimand to insurance intermediary XXX in respect of a failure to hold professional indemnity insurance ("PII") for a period of time. Insurance intermediaries are required to hold PII under Regulation 17 of the European Communities (Insurance Mediation) Regulations, 2005 (the "IMR").
4. Central Bank of Ireland disqualifies Mr XXX, a former general partner of XXX, from being a person concerned in the management of a regulated financial service provider for 10 years and reprimanded him for his actions when Head of Finance and Compliance of the firm.

For further details of these decisions and other sanctions, visit the Central Bank's website and its [publications page](#).